

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1979

No. **78-1256**

MRS. INEZ WALLER,

Petitioner,

VERSUS

MISSISSIPPI STATE HIGHWAY COMMISSION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF MISSISSIPPI

WILLIAM LAWSON  
Post Office Box 848  
Tupelo, Mississippi 38801

OMAR D. CRAIG, P.A.  
Post Office Drawer 926  
Oxford, Mississippi 38655

COUNSEL FOR PETITIONER

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## SUPREME COURT OF THE UNITED STATES OCTOBER TERM. 1979

NO. \_\_\_\_\_

MRS. INEZ WALLER

PETITIONER

VERSUS

MISSISSIPPI STATE HIGHWAY COMMISSION

RESPONDENT

### PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Mississippi entered in the above case on October 4, 1978. A subsequent Petition for Rehearing was denied on November 15, 1978.

#### OPINIONS BELOW

There are no reported opinions.

#### JURISDICTION

The jurisdiction of this Court is invoked under 23 U.S.C. 1257(3). The judgment of the Supreme Court of the State of Mississippi was rendered on October 4, 1978, and an Order Denying Petition for Rehearing was entered on November 15, 1978, copies of which are appended to this Petition in the Appendix at pages A-2, A-6, and A-7.

#### QUESTIONS PRESENTED

Petitioner, a tenant in common with her husband, owned

an undivided half interest in land condemned by the Respondent, Mississippi State Highway Commission. An action was brought by the Respondent which named only the husband, and a trial to determine damages was held in the Special Court of Eminent Domain. Petitioner was present at the trial and was subjected to cross-examination by Respondent's counsel but was never asked whether she, too, owned an interest in the condemned land; and she never testified to an ownership interest. The jury returned an award for damages. Thereafter, Petitioner instituted suit in a court of law to secure compensation for her interest in the land. On motion of the Respondent, the cause was transferred within Mississippi's bifurcated system to a court of equity in which the Respondent might assert such equitable defenses as estoppel and unjust enrichment. The Chancellor found that the Highway Commission had not legally condemned Petitioner's interest under Mississippi's eminent domain statutes and had not shown the applicability of any equitable defenses. Respondent appealed, and the Mississippi Supreme Court reversed on the grounds that Petitioner was equitably estopped from asserting her ownership interest in the land and receiving compensation. Petitioner's ownership interest was of record and available for all the world to see.

The questions presented are:

(1) May the state assert an equitable defense to defeat a claim that it has condemned property in a manner inconsistent with its own statutes which has worked to deny compensation to the owner of an interest in that property?

(2) If the state has failed to follow the guidelines of its own statutes in the condemnation of property by failing to name all the owners of an interest in that property as parties in the condemnation proceeding, is it a denial of due process

to deny an unnamed owner a judicial determination of the value of her interest when such is the manner provided by law?

(3) May the state refuse to compensate the owner of an undivided half interest in land on the grounds that it has paid compensation for the whole value of the condemned land to the owner of the other undivided half interest as the result of a proceeding to which the unnamed owner was not a party, when the statute placed a clear duty on the state to ascertain the identity of the owners of all interests in property to be taken by the state; or, has there been a violation of due process?

#### **Constitutional Provisions Involved**

The principal Constitutional provisions involved are the Fifth and Fourteenth Amendments to the Constitution of the United States.

#### **State Provisions Involved**

Because this Petition rests on the fact that the State of Mississippi, acting by and through its Highway Commission, failed to abide by the provisions of its own statutes, the applicable Mississippi statutes are set out in the Appendix hereto under separate heading.

#### **STATEMENT OF THE CASE**

Mrs. Inez Waller was the owner of an undivided one-half interest in land through a deed which named her as a tenant in common with her husband. The deed was of public record and available for all the world to see, and Mrs. Waller had occupied the property for many years.

On or about September 12, 1975, the Mississippi State Highway Commission began condemnation proceedings to take



for public use a portion of the land jointly owned and occupied by the Wallers. Under Mississippi procedures, such a proceeding is brought on Application to the Special Court of Eminent Domain and is a judiciary rather than administrative procedure. The cause was styled "State Highway Commission of Mississippi v. Wayne Waller." Mrs. Inez Waller, the Petitioner, a co-tenant of Wayne Waller, was not named, no process was issued for her, and no authority was granted by the Commission to take her interest. A trial was held on the issue of damages on January 9 and 10, 1976, during which Mrs. Inez Waller testified as to the value of the property being taken and further testified about her occupation and use of the property. She was not asked whether she held an ownership interest and did not testify as to any ownership interest in the property. As is the practice in Mississippi, the issue of damages and compensation was submitted to a jury; and a verdict was returned which resulted in a verdict for Mr. Wayne Waller in the sum of Fourteen Thousand Seven Hundred Forty and No/100 (\$14,740.00) Dollars.

In August, 1976, Mrs. Waller filed a lawsuit against the State Highway Commission alleging *inter alia* that the State was taking her property without compensation in violation of the Fifth Amendment of the Constitution of the United States.

Mississippi has a bifurcated system of law and equity courts; and following the filing of the Petitioner's action in a court of law, the State Highway Commission moved for a transfer to a court of equity so that it could raise the equitable defenses of estoppel and unjust enrichment, as well as decide title to real estate. A trial was had before a Chancellor who determined that the equitable defenses just named had no applicability and that Mrs. Waller's interest in the land had not been legally condemned. The Chancellor stated that the primary reason the original eminent domain condemnation was invalid was that the Highway Commission had no authority on its minutes (as required by the Mississippi Code) to condemn Mrs. Waller's

property and that the actions of the Commission amounted to a violation of due process and a taking without compensation.

The State appealed and the Mississippi Supreme Court, in an unpublished opinion, ignored all other issues in holding that Mrs. Waller was estopped from asserting her interest in the condemned land in a later proceeding. Thereafter, a Petition for Rehearing was denied.

### Reasons for Granting the Writ

Rule 12 of the Rules of the Supreme Court of the United States set forth that a Writ of Certiorari will be granted "only where there are special and important reasons therefor." The Supreme Court's discretion characterized by the further illustration that the reasons may be measured by the statement:

- (a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.  
(Rule 19)

In the instant case, the Mississippi Supreme Court has ignored a valid federal question laid squarely before it and has excused the violation of constitutionally guaranteed rights through the vehicle of an unpublished opinion and reliance on common law equitable defenses.

This case presents the novel question of whether a State's taking of private property for public use without compensation may be negated by the utilization of such equitable doctrines as *equitable estoppel*, and whether such a taking constitutes a denial of due process and equal protection of law if it is done in a manner contrary to the statutory provisions governing eminent domain.

The United States Supreme Court has stated that the Fourteenth Amendment made the provision of the Fifth Amendment against the taking of private property for public use without just compensation obligatory on the States. *Gideon v. Wainwright*, 372 US 336, 342, 343, 9 L ed 2d 799, 803, 304, 83 S Ct 792 (1963) citing at N. 5; *Chicago, B & Q R. Co. v. Chicago*, 166 US 226, 235-241, 41 L ed 979, 984-986, 17 S Ct 581 (1897); *Smyth v. Ames*, 169 US 466, 522-526, 42 L ed 819, 840-842, 18 S Ct 418 (1898).

The condemnation of Petitioner's land was a legal nullity. Several sections of the Mississippi Code were completely abrogated.

Section 11-27-5 states that any entity with the right to condemn must file a petition which makes

all the owners . . . or other person having an interest therein [in the property sought to be condemned] . . . a Defendant thereto . . . The Petition shall describe in detail the property . . . , and shall identify the interest or claim of each Defendant.

This was not done by the condemnor, Respondent herein. Other sections which name the Respondent as an entity which may condemn requires that it "speak only through its minutes," Section 65-1-5 and that its minutes authorize the bringing of a condemnation in conformity with the Section (11-27-5) quoted above. None of this was observed by Respondent in the instant case, and the property and legality of the condemnation itself was never addressed by the Mississippi Supreme Court. If the Respondent did not have the authority to condemn Petitioner's interest, then the condemnation of the land is an arbitrary taking for which she has not been compensated. An error of this magnitude is a denial of due process and amounts to a disregard of Respondent's right to have the value of her interest adjudicated and just compensation paid to her. *Roberts v. City of New York*, 295 US 264, 277-278, 79 L ed 1429, 1435-1436, 55 S Ct 689 (1934); *McGovern v. City of New York*, 229 US 369-371, 57 L ed 1228, 1231-1233, 33 S Ct 876 (1913).

Although Petitioner's husband received notice that he was a defendant in an eminent domain condemnation suit, Petitioner herself never received any direct judicial notice of the proceedings, and the notice she did have applied only to her co-tenant.

The fact that Mrs. Waller owned an undivided half interest in the condemned property was readily and easily ascertainable from public land records, and it was the duty of the State to ascertain this ownership and give notice to her. The Petitioner's only notice was the proceeding against her husband's interest which did not make her a party. In Mississippi there is no right to intervene in a lawsuit apart from statute and there is no authorization to intervene in an eminent domain proceeding; thus, even though she received actual notice of the condemnation, the Petitioner could still not have participated as a party to the condemnation proceeding.

Failure to include Petitioner as a defendant therefore amounted to a lack of notice and the denial of her right to judicially determined compensation. *Walker v. Hutchinson*, 352 US 112, 115-116, 1 L ed 2d 178, 181-182, 77 S Ct 200 (1956); *Schroeder v. City of New York*, 371 US 208, 9 L ed 2d 255, 83 S Ct 279.

The Highway Commission of the State of Mississippi has the power to condemn land under the authority of the laws of Mississippi. But it and any other entity must abide by the procedures contained in those statutes.

Mr. Justice Holmes dissenting in *Madisonville Traction Co. v. St. Bernard Mining Co.*, 196 US 239, 49 L ed 462, 25 S Ct 251, stated at 196 US 257:

.....  
The fundamental fact is that eminent domain is a prerogative of the state, which, on the one hand, may be exercised in any way that the state thinks fit, and, on the other, may not be exercised except by an authority which the state confers. . . .

And it is clear that the concept that the state must obey its own laws and strictly adhere to its own procedures when

condemning private property is a basic and fundamental right of owners of private property under the Constitutional concept of government of limited and specified powers. *City of Cincinnati v. Vester*, 281 US 439, 74 L ed 950, 50 S Ct 360 (1929); See also *New Orleans v. The United States*, 10 Peters 573, 9 US 662, (1936).

For the State to avoid its responsibility to insure the application of due process to its citizens by the assertion of an equitable defense gives rise to a dangerous concept. Under this reasoning, if the state were to violate the fundamental rights of one of its citizens, it could, if it so chose, hamper that citizen's access to its courts by the assertion of common law defenses and matters which might bar that citizen's right to obtain redress. No argument is made that Mississippi's form of eminent domain is in itself violative of due process; but, when the form is ignored by the condemnor, due process has been violated.

Regarding the instant case, Mississippi case law provides that the requirement that all parties of interest be made parties to the condemnation and be duly notified by proper process must be strictly followed. *New v. State Highway Commission*, 297 So.2d 821 (Miss. 1974). Thus, under Mississippi's legislatively devised statutory method of eminent domain condemnation, actual notice means nothing and procedural notice means everything. The equitable defenses asserted by the state derived from Petitioner's having actual notice of the proceeding, testifying therein, but not testifying to an ownership interest in the condemned land. As the result of the assertion of estoppel being allowed by the Mississippi Supreme Court, Petitioner's claim for compensation for her interest in the property was barred forever; yet, Mississippi law has no provisions for her intervention into a condemnation proceeding to which she was not a party. This combination, if carried to its logical extension, would mean that in Mississippi, if the condemning entity fails to fully identify and give notice to all parties;



and these parties have actual or constructive notice of the proceeding in condemnation, then they will not be able to intervene in the present condemnation and could be barred from initiating actions at law to recover compensation from the condemnor. See *Chase National Bank v. City of Norwalk*, 291 US 431, 78 L ed 894 (1933)

### CONCLUSION

This Petition should be granted. The fundamental right to own property and to be secure from having that property taken by government without just compensation or the due process of law deserves to be zealously protected. To allow government to avoid its errors by the assertion of common law defenses designed to regulate civil actions between individuals could work to rubberstamp governmental wrongdoing in instances in which those who are poor or ignorant of their legal rights fails to completely follow the law in ways which are not statutory and which may result in a highly subjective application of common law maxims to defeat the rights of such people.

WILLIAM LAWSON  
Post Office Box 848  
Tupelo, Mississippi 38801

OMAR D. CRAIG, P.A.  
Post Office Drawer 926  
Oxford, Mississippi 38655

William Lawson *per m.a.s.*  
Counsel for Petitioner

### PROOF OF SERVICE

I, William Lawson, one of the attorneys for Mrs. Inez Waller, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 5th day of January, 1979, I served copies of the foregoing Petition for a Writ of Certiorari to the Supreme Court of the State of Mississippi on the party thereto, as follows:

On the Mississippi State Highway Commission by and through its agent for the service of process, Honorable A. F. Summers, Attorney General for the State of Mississippi by mailing a copy in a duly addressed envelope, with postage prepaid, to said Attorney General at Post Office Box 220, Jackson, Mississippi 39205.

WILLIAM LAWSON  
Post Office Box 848  
Tupelo, Mississippi 38801

William Lawson *per m.a.s.*  
Counsel for Petitioner

**APPENDIX**

**SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1979**

**NO. \_\_\_\_\_**

**MRS. INEZ WALLER**

**PETITIONER**

**VERSUS**

**MISSISSIPPI STATE HIGHWAY COMMISSION**

**RESPONDENT**

**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**OPINION OF THE SUPREME COURT OF  
MISSISSIPPI RENDERED OCTOBER 4, 1978**

**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 50,634**

**MISSISSIPPI STATE HIGHWAY COMMISSION**

**v.**

**MRS. INEZ WALLER**

***NOT DESIGNATED FOR PUBLICATION***

**COURT FROM WHICH APPEALED:    CHANCERY COURT  
   LAFAYETTE COUNTY**

**PRESIDING JUDGE:                    CHANCELLOR WILLIAM H.  
   ANDERSON**

**ATTORNEYS:    FOR APPELLANT:                    BLAIR & MACKEY**

**FOR APPELLEE:                    CRAIG & CLISBY**

**NATURE OF THE CASE:                    EQUITABLE ESTOPPEL**

**DISPOSITION:                    REVERSED AND RENDERED**

**BEFORE SMITH, WALKER AND BOWLING**

**BOWLING, JUSTICE, FOR THE COURT:**

This is an appeal from the Chancery Court of Lafayette County, Mississippi. The record shows an unusual chain of events leading to the chancellor's final decree.

The Mississippi State Highway Commission was in the process of acquiring real property for the construction of two additional lanes of the highway between Oxford and Batesville. On September 15, 1975, the State Highway Commission filed its application of taking in a Special Court of Eminent Domain of Lafayette County, the primary purpose of the suit being to establish the value of approximately three acres of land near Oxford that was necessary for the highway construction.

The only defendant and alleged landowner in the cause was Wayne Waller, whereas in truth and in fact, his wife, Mrs. Inez Waller, appellee herein, for many years had owned the property as tenants in common with her husband. In some manner, the exact reason not being entirely clear in the record, the Highway Commission made an error and did not include Mrs. Waller in the suit.

Testimony was received from various experts presented by both sides of the eminent domain controversy. Testimony was also received from Wayne Waller and appellee, Mrs. Inez Waller.

The eminent domain court jury found that the property being taken had a total value of \$14,740. This verdict and subsequent judgment entered on January 12, 1976, together with interest, was paid by the Highway Commission to the husband, Wayne Waller.

On June 11, 1976, appellee, Mrs. Inez Waller, represented by the same attorneys who appeared for her husband, filed an inverse condemnation proceeding in the Circuit Court of Lafayette County, alleging that Mrs. Waller had not been paid for her one-half interest in the property taken and that she was entitled to the same amount given by the jury in the first case.

The Highway Commission answered the suit, setting out several defenses, among which were affirmative defenses of equitable estoppel and unjust enrichment. After these pleadings, the Highway Commission filed its motion to transfer the cause to the chancery court for the reason that serious equitable questions were involved. Although this motion was contested, the circuit court entered its order transferring the cause to the chancery court where it was tried on October 5, 1976. The lower court filed its written opinion on August 8, 1977, and entered its final decree on August 22, 1977. This decree found that appellee was entitled to one-half of the original total value of the land as set by the jury of the court of eminent domain.

At the trial in the chancery court, there was considerable testimony from Mr. and Mrs. Waller, expert witnesses, as well as statements entered into the record by the attorneys. We carefully have read and studied all of this evidence, including depositions given by the parties, and are of the opinion that no useful purpose would be served by discussing that evidence here in detail. After reviewing the entire record, we are of the opinion that the lower court was in error in holding that the principal of equitable estoppel does not here apply. As obviously thought by the circuit judge, the cause really is a matter for equitable considerations. We find that the principles of equitable estoppel as set out in *Peller, et al v. Hutson*, 202 Miss. 837, 32 So.2d 785 (1974), and *Kelso, et al v. Robinson*, 172 Miss. 828, 161 So. 135 (1935), apply to the situation as revealed by this record. It is elemental that every case of this nature is different. The facts in no two cases are identical. In our opinion, the authorities cited by the learned chancellor do not apply to the record of this particular case. Considering all the circumstances and evidence in this cause, we find and so hold that appellee was estopped from filing the declaration in the nature of an inverse condemnation suit.

The cause, therefore, should be and it is **reversed** and rendered for the Mississippi State Highway Commission.

REVERSED AND RENDERED.

PATTERSON, C.J., SMITH, P.J., ROBERTSON, P.J.  
SUGG, WALKER, BROOM, LEE AND COFER, J.J.,  
CONCUR



**JUDGMENT OF THE SUPREME COURT OF  
MISSISSIPPI DATED DECEMBER 1, 1978**

**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 50,634**

**MISSISSIPPI STATE HIGHWAY COMMISSION**

**v.**

**MRS. INEZ WALLER**

**JUDGMENT**

This cause having been submitted at a former Term of this Court on the record herein from the Chancery Court of Lafayette County and this Court having sufficiently examined and considered the same and being of the opinion that there is error therein doth order and adjudge that the Judgment of the Chancery Court rendered in this cause on the 22nd day of August, 1977, be and the same is hereby reversed and Judgment is rendered here for the Mississippi State Highway Commission. It is further ordered, adjudged and decreed that the appellee do pay all of the costs of this appeal to be taxed for which let proper process issue.

/s/ Honorable Neville Patterson  
Chief Justice

/s/ Julia H. Kendrick  
Clerk

**ORDER OF THE SUPREME COURT OF  
MISSISSIPPI DENYING PETITION FOR  
REHEARING HANDED DOWN NOVEMBER 15, 1978**

**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 50,634**

**MISSISSIPPI STATE HIGHWAY COMMISSION**

**v.**

**MRS. INEZ WALLER**

This cause this day came on to be heard on Petition for Rehearing filed herein and this Court having sufficiently examined and considered the same and being of the opinion that the same should be denied doth order that said Petition be and the same is hereby denied.

/s/ Honorable Neville Patterson  
Chief Justice

/s/ Julia H. Kendrick  
Clerk

**SECTION 11-27-5, MISSISSIPPI CODE OF 1972,  
ANNOTATED**

§11-27-5. Petition to condemn - parties - preference.

Any person or corporation having the right to condemn private property for public use shall file a petition to condemn with the circuit clerk of the county in which the affected property, or some part thereof, is situated and shall make all the owners of the affected property involved, and any mortgagee, trustee, or other person having any interest therein or lien thereon a defendant thereto. The petition shall be considered a matter of public interest and shall be a preference case over other cases except other preference causes. The petition shall describe in detail the property sought to be condemned, shall state with certainty the right to condemn, and shall identify the interest or claim of each defendant.

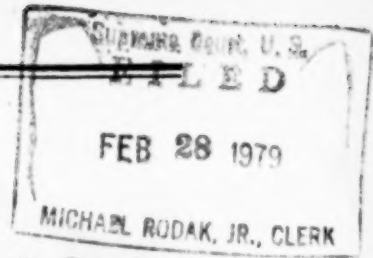
**SECTION 65-1-5, MISSISSIPPI CODE OF 1972,  
ANNOTATED**

§65-1-5, Organization and meetings.

Upon the said three highway commissioners chosen from three supreme court districts entering upon the duties of their office, the state highway commission shall meet and organize by the election of one of its members to serve as chairman of the commission for the four-year term for which said commissioner shall have been elected. The commission, a majority of which shall constitute a quorum, shall meet in regular session on the second Tuesday of each month at the office of the state highway commission in their offices at Jackson, Mississippi; and at such regular sessions it may hear, continue, and determine any and all matters coming before it. The said commission may hold special sessions at the call of the director or chairman at such times and places in this state as either of them may deem necessary. At such special sessions it may hear, continue, consider, and determine any and all matters coming before it, provided that at least five day's notice of such meetings shall be given to all the members of the commission beforehand. A special session may be called at any time without the foregoing notice, or any notice, if by and with the unanimous consent of all the members of the commission, but such unanimous consent shall be spread at large on the minutes of the commission.

The state highway commission herein created shall act as a legal entity and shall only speak through its minutes, and in all matters shall act as a unit. Any action on the part of any member of said commission separately shall not bind said commission as a unit, but said individual member only shall be liable personally on his official bond.

IN THE



# Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1256

MRS. INEZ WALLER

Petitioner

VERSUS

MISSISSIPPI STATE HIGHWAY COMMISSION

Respondent

SUPPLEMENTAL APPENDIX TO THE PETITION  
FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF MISSISSIPPI

WILLIAM LAWSON  
Post Office Box 848  
Tupelo, Mississippi 38801

OMAR D. CRAIG, P.A.  
Post office Drawer 926  
Oxford, Mississippi 38655

COUNSEL FOR PETITIONER

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**SUPPLEMENTAL APPENDIX**

**SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1979**

**NO. 78-1256**

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**MRS. INEZ WALLER.....PETITIONER**

**V.**

**MISSISSIPPI STATE HIGHWAY  
COMMISSION..... RESPONDENT**

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**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

OPINION OF THE CHANCERY COURT OF LAFAYETTE  
COUNTY, MISSISSIPPI, DATED AUGUST 8, 1977

IN THE CHANCERY COURT OF LAFAYETTE COUNTY,  
MISSISSIPPI IN VACATION 1977

MRS. INEZ WALLER	COMPLAINANT
V.	NO. A-6478
STATE HIGHWAY COMMISSION OF MISSISSIPPI,	DEFENDANT

OPINION OF COURT

An application for a Special Court of Eminent Domain was filed in the Circuit Court of Lafayette County on or about September 12, 1975, which was styled "State Highway Commission of Mississippi vs. Wayne Waller", Cause No. 101.

The State Highway Commission was seeking to condemn a tract of land for highway purposes and named "Wayne Waller, Owner" as the Defendant. Trial was had in response to said application on January 9th and 10th, 1976, and resulted in a judgment for Mr. Waller in the sum of \$14,740.00. Judgment for said amount was signed by Circuit Judge W. W. Brown on or about January 12, 1976. Mr. Waller was paid the amount of the judgment.

On August 12, 1976 Mrs. Inez Waller filed a declaration in the Circuit Court of Lafayette County, Cause No. 8967, in which she alleged that she owned a one-half undivided interest in the real estate which was the subject of the condemnation suit by the Highway Commission against her husband, Wayne Waller; and that she had not conveyed her interest to the Highway Commission and that same had not been condemned in the lawsuit which was tried, the tenancy in common having been established by deeds referred to in pleadings,

which are recorded in Deed Book 119, page 469 and Deed Book 124, page 88. Copies thereof having been made exhibits to the declaration.

A motion was made by the defendant to transfer the matter to the Chancery Court of Lafayette County, which motion was sustained by the Circuit Judge. The order is recorded in Minute Book 0 at page 172, direct reference to which is here made.

The cause then became cause No. A-6478 on the docket of the Chancery Court of Lafayette County, and the same was heard by the Chancellor, who at the conclusion of the trial took same under advisement, with the provision that briefs might be submitted to him by the respective attorneys if they cared to do so.

The Court finds that Mrs. Inez Waller is the owner of an undivided interest in the real property which was condemned in the case of Wayne Waller; that such fact was not disclosed by either Mr. or Mrs. Waller during the trial of the eminent domain case; and that neither of them was asked about the ownership of an interest in the property by Mrs. Waller.

The Court further finds that the Defendant has exercised acts of ownership over said property as if they owned it, and have paid no consideration whatever to Mrs. Waller, and have obtained no deed or permit from her.

The Court is of the opinion and finds that the Eminent Domain proceeding was conducted as if the entire interest in the land was being condemned, that the witnesses who testified as to the value of the property and amount of damages were testifying as to the whole interest in the property, and by instruction No. P-6 instructed the jury "that the measure of damages in this case is the difference between the fair market value of all the property immediately before the acquisition and the fair market value of what remains after the land is acquired."

It is clear that this proceeding did not bind Mrs. Waller in any way.

This is not a case in which *res judicata* can be pleaded successfully as all of the elements necessary to make it a case of *res judicata* are not present.

This brings us to the question as to whether or not Mrs. Waller is estopped from claiming compensation for her one-half interest in the property. I would have to say, that under our Mississippi, United States and other decisions, of which there are quite a number, that she is not estopped as her interest has been or is being taken, without due process and without compensation as required by the Mississippi Constitution and the Code.

I am not going to quote at length from the decisions, but will include a few quotations which I consider pertinent.

However, I call attention to the fact that the Highway Commission had no authority on its minutes, and gave no authority on its minutes for the interest of Mrs. Inez Waller in the lands in controversy to be condemned. Therefore, Mrs. Waller's interest was not legally condemned and taken by the judgment in the Eminent Domain Case.

The following is quoted from *QUATES VS. GRIFFIN*, 239 So. 2d 803: "In *Craft v. Everett*, 115 So. 2d 133, through an estoppel case, we commented upon the failure of a vendee to inspect the records stating: Our view concerning the juristic position of a vendee or mortgagee who omits to inspect the records is that 'his ignorance, if it exists, is wilful, and he acts at his peril.' The preferable theory, however, is that the omission of an intending purchaser or mortgagee to investigate the state of the title of the property in question constitutes negligence on his part. . ."

The case of *CHASE NATIONAL BANK VS. CITY OF NORWALK*, 291 U.S. 431, 78 L. Ed. 894, states that "the law does not impose upon any person absolutely entitled to a hearing the burden of voluntary intervention in a suit to which he is a stranger . . . Unless duly summoned to appear in a legal proceeding, a person not privy may rest assured that a judgment recovered therein will not affect his legal rights."

One of the owners of a tract of land was present at a foreclosure sale and said nothing about her interest in the land in the case of *SULPHINE VS. DUNBAR, ET AL*, 55 Mississippi 255. The Court said: "She had a right to be silent. Her title to an interest in the land was indisputable, and the world had notice of it. She did nothing to mislead or deceive the appellant, or to induce him to purchase the land, and she was under no obligation to forbid the sale, or to warn the appellant not to buy."

The case of *STATON VS. BRYANT*, 55 Mississippi 261, said in part: "A party should ordinarily inquire into the title before he undertakes to appropriate property. He whose title is on record has given the notice which all are bound to know and respect."

The case of *MISSISSIPPI STATE HIGHWAY COMMISSION VS. WEST* states in part: "We are of the opinion that the doctrine of estoppel by judicial admission does not apply to the proceeding where the petitioner is required by statute to name as defendants all persons who may have an interest in the property sought to be condemned, and where the petitioner is required to act at its peril in seeing to it that all such parties are named."

The following is quoted from the case of *MEYERTCORT VS. WARRINGTON*, 19 So. 2d 433: ". . . courts will not give effect to an estoppel where the parties are equally well informed as to the essential facts, or where the means of knowledge was equally open to them."

In CRAFT, ET AL VS. EVERETT, 115 So. 2d 133, we find this significant statement: "When the condition of the title is known to both parties, or both have the same means of ascertaining the truth, there can be no estoppel."

The case of ROBERTS VS. BOOKOUT, 139 So. 175, contains the following statement: "Equity will not, on the mere ground of silence, relieve one who is perfectly acquainted with his rights, or has the means of becoming so. One should ordinarily inquire into the title before he undertakes to purchase land. He whose title is of record has given notice which all are bound to respect, and generally the law does not require more . . ."

With reference to the Highway Commission using witnesses who testified on the Eminent Domain case No. 101, I think the following rule as stated in 31A C.J.S., Section 387. Identity of parties is pertinent: "The general rule is that testimony taken in a suit to which a litigant was not a party cannot be used against him, and the evidence introduced in one case is inadmissible in a subsequent case between different parties."

With reference to privity between the parties the following is quoted from 31A C.J.S. Evidence, Section 388: ". . . the necessary privity does not arise from mere community of interest, or merely from the relationship between husband and wife,"

Once the judgment in Eminent Domain case No. 101 became final and no appeal was taken, it is final for all purposes., as written, speaks for itself, and cannot be modified, explained, enlarged, or affected. The judgment is final and cannot be tampered with.

Section 529.48 Am. Jur. 2d Judgments, state in part as follows: "In the strict sense of the term, parties to a judgment in the eyes of the law are those only who are named as such

in the record, and are properly served with process, or enter their appearance. . . ."

I am convinced that under the law and the facts in this case Mrs. Waller is entitled to be paid for the undivided interest she owned in the land which was condemned.

No proof was offered in this cause as to the value of her half-interest in the property. Complainant contends that she should be paid the same amount which was paid to her husband.

It is clear to me that the valuation places on the property by the witnesses in the eminent domain case was intended to be a valuation of the entire interest in the tract of real estate. There is nothing in the pleading or in the evidence indicating that Mrs. Waller owned an interest in the property, and she was under no legal obligation to disclose that information, unless she was asked about it.

There is nothing in the record to indicate that there was any intention or desire by the Highway Commission to mistreat Mrs. Waller or to unjustly take her property without compensation. It was simply an error on the part of someone.

I cannot agree with the contention that she is entitled to the same amount as was awarded her husband. The award to him was apparently for a one hundred percent interest in the property. I think we can assume that the amount awarded \$14,740.00 was a fair and reasonable consideration for the property.

In my judgment it would be fair and equitable to award her a judgment for one-half of the amount of the original award to Mr. Waller which is \$7,370.00 She shall therefore have judgment for that amount, plus six percent (6%) interest from September 15, 1975.



In addition she will be awarded \$2,456.66 for attorney's fees, this having been a case of inverse condemnation in which the defendant is due to be taxed with her expenses. The Defendant shall also be taxed with the court costs.

This the 8th day of August, 1977.

/s/ William H. Anderson  
Chancellor

DECREE AND JUDGMENT OF THE CHANCERY  
COURT OF LAFAYETTE COUNTY,  
MISSISSIPPI, ENTERED AUGUST 22, 1977

IN THE CHANCERY COURT OF LAFAYETTE COUNTY,  
MISSISSIPPI  
AUGUST TERM, 1977

MRS. INEZ WALLER..... COMPLAINANT  
V.  
STATE HIGHWAY COMMISSION OF  
MISSISSIPPI..... DEFENDANT

NO. A-6478

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DECREE AND JUDGMENT

This day this cause came on to be heard on Declaration filed in the Circuit Court of Lafayette County, Mississippi, Summons for the State Highway Commission, properly and legally had, Motion of the Highway Commission to Transfer this cause to the Chancery Court of Lafayette County, Mississippi, Hearing on said Motion to Transfer, Order transferring said cause from the Circuit Court of Lafayette County, Mississippi, to the Chancery Court of Lafayette County, Mississippi, Answer to Original Bill, Motion to Strike some of the Matters and Affirmative Allegations contained in the Answer, Hearing on the Motion to Strike, Order Sustaining the Motion to Strike, testimony of witnesses, argument of counsel, Brief of Counsel, mature consideration by the Court, and Opinion of the Court.

The Court finds:

(1)

That the Court has jurisdiction of the subject matter and the parties in this cause.

(2)

That on or about the 12th day of September, 1975, in a Special Court of Eminent Domain of Lafayette County, Mississippi, the Highway Commission filed an application seeking to condemn a tract of land for highway purposes and named "Wayne Waller, Owner," as the Defendant. That trial was had on said application, resulting in a Judgment dated January 12, 1976, which Judgment was in the sum of Fourteen Thousand Seven Hundred Forty and No/100 (\$14,740.00) Dollars. Said Judgment was thereafter paid by the State Highway Commission of Mississippi.

(3)

That on the 12th day of August, 1976, Mrs. Inez Waller, wife of Wayne Waller, filed suit alleging she owned an undivided one-half interest in the tract of land which was the subject of the condemnation suit had against Wayne Waller and that her interest had not been condemned and that she had not been paid for her interest in the land as a result of the taking. Attached to said suit were Exhibits which established that Mrs. Inez Waller was tenant in common in the land taken.

(4)

That the Eminent Domain proceeding had against Wayne Waller is not res judicata as to Mrs. Waller's interest in the land nor is Mrs. Waller estopped from claiming compensation for her interest in the land.

(5)

That the Plaintiff-Complainant's interest in the land was not legally condemned and taken by the Judgment entered in the Eminent Domain Case of State Highway Commission of Mississippi v. Wayne Waller.

(6)

That the only proof as to value of Mrs. Inez Waller's undivided one-half interest in the property was that the jury's verdict of Mrs. Waller's interest in the Eminent Domain Case.

(7)

That the Court was of the opinion that Mrs. Waller's interest was worth and had a value of one-half of the original award to Mr. Waller, which was Fourteen Thousand Seven Hundred Forty and No/100 (\$14,740.00) Dollars or a value of Mrs. Waller's interest of Seven Thousand Three Hundred Seventy and No/100 (\$7,370.00) Dollars.

(8)

That Mrs. Waller be entitled to interest from the date of taking, which was the 12th day of September, 1976. The Court, in its opinion, granted interest at the rate of Six (6%) percent per annum. However, Section 75-17-7, Mississippi Code of 1972, Annotated, has been called to the Court's attention, which provides for interest at the rate of eight (8%) percent on all Judgments and Decrees rendered after July 1, 1975. Therefore, the opinion is modified to read eight (8%) percent rather than six (6%) percent.

(9)

That this, being a case of inverse condemnation, the

Defendant, State Highway Commission of Mississippi is due to be taxed with the expenses of Mrs. Waller, being attorney's fee, and a reasonable amount is found by the Court to be Two Thousand Four Hundred Fifty-Six and 66/100 (\$2,456.66) Dollars.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that Mrs. Inez Waller, Complainant herein, have a total Judgment against the Defendant in the sum of Nine Thousand Eight Hundred Twenty-Six and 66/100 (\$9,826.66) Dollars, together with interest at the rate of eight (8%) percent per annum from the 12th day of September, 1975, and all costs of this proceeding, for which execution may issue.

ORDERED, ADJUDGED, AND DECREED on this the 22nd day of August, 1977.

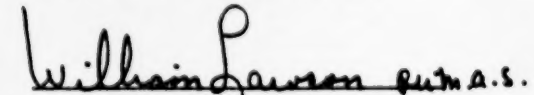
/s/ William H. Anderson  
Chancellor

## PROOF OF SERVICE

I, William Lawson, one of the attorneys for Mrs. Inez Waller, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 19th day of February, 1979, I served copies of the foregoing Supplemental Appendix to the Petition for a Writ of Certiorari to the Supreme Court of the State of Mississippi on the party thereto, as follows:

On the Mississippi State Highway Commission by and through its agent for the service of process, Honorable A. F. Summers, Attorney General for the State of Mississippi by mailing a copy in a duly addressed envelope, with postage prepaid, to said Attorney General at Post Office Box 220, Jackson, Mississippi 39205.

WILLIAM LAWSON  
Post Office Box 848  
Tupelo, Mississippi 38801

  
Counsel for Petitioner